

**IN THE COURT OF APPEALS OF IOWA**

No. 0-524 / 10-0916  
Filed August 11, 2010

**IN THE INTERST OF M.G.,  
Minor Child,**

**J.M.G., Mother,  
Appellant.**

---

Appeal from the Iowa District Court for Linn County, Barbara H. Liesveld,  
District Associate Judge.

A mother appeals from the order terminating her parental rights.  
**AFFIRMED.**

Cynthia Finley, Cedar Rapids, for appellant mother.

David Nadler, Cedar Rapids, for father.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Robert Hruska, Assistant  
County Attorney, for appellee State.

Mark Fisher, Cedar Rapids, for minor child.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

**DANILSON, J.**

M.G. was born in April 2003. He is a seven-year-old child who has been out of his mother's care for almost four years. He and his sister (born in April 2006) were removed from their mother's care in May 2006 because his sister was diagnosed with failure to thrive. A founded abuse report named the mother, Jennifer, and her husband, Bill,<sup>1</sup> as perpetrators. The girl was placed with her biological father. M.G. was returned to his mother in June 2006.

In August 2006, M.G. swallowed an overdose of cough medicine, which resulted in another founded abuse report for denial of critical care, lack of supervision. M.G. was placed with a foster family and then, in October 2006, after testing established paternity, M.G. was placed in his biological father's care. M.G. remains in the care of his father and stepmother. He is doing well in that placement. He is bonded with his stepmother who is willing to adopt him. He gets along with his five stepsiblings (two stepbrothers living in the home and three stepsisters who are older and out of the house).

M.G.'s mother, Jennifer, has been involved in a physically violent and physically, mentally, and sexually abusive relationship with Bill for more than five years. That relationship has threatened the safety of her children<sup>2</sup> (Bill has duct-taped M.G.'s mouth shut and locked him in the basement; Jennifer has not been able to protect M.G. from Bill in the past; and she has not fully understood how

---

<sup>1</sup> Bill is not M.G.'s biological father.

<sup>2</sup> In addition to M.G. and his sister, S., Jennifer had another son, D., who was removed from her care directly from the hospital. Jennifer reported this child was a result of "swinging" activities Bill forced her to participate in and the father was unknown. Her rights to D. were terminated by order filed September 16, 2008. Jennifer voluntarily gave up another child who was born when Jennifer was a teenager.

this violent relationship impacts her children). Many no-contact orders have been issued and subsequently broken either by Bill or Jennifer. When Jennifer has resumed her relationship with Bill in the past, she has actively tried to hide that fact from the Iowa Department of Human Services (DHS).

Jennifer has been offered numerous services throughout her involvement with the DHS, including parenting instruction, supervised visits, monies to assist with mental health counseling, domestic violence shelter, domestic abuse counseling, and medical assistance. Jennifer has had supervised visits with M.G. throughout the history of this case. She had one semi-supervised visit; however, she allowed Bill to see M.G. at a time visitation with Bill was suspended. Consequently, all visits have been fully supervised for the past three years. In October 2007, her visits were cut to once a week after M.G. and his sister were permanently placed with their respective fathers. In May 2008, Jennifer's visits were cut to twice a month because she was not consistent in attending. By the beginning of 2009, her visits had been cut to once a month.

In October 2009, Jennifer was issued a domestic abuse protective order against Bill.

In November 2009, M.G.'s guardian ad litem filed a petition to terminate Jennifer's parental rights. At the time of trial, March 24, 2010, Jennifer was receiving one, two-hour visit per month with M.G.

At trial, M.G.'s father testified that Jennifer was inconsistent with her monthly visits so he does not tell M.G. about the visit until the caseworker "pulls in the driveway." He also testified that he, his wife, and M.G. once saw Bill at a car show and M.G. hid behind his stepmother, "hugging her leg and he wouldn't

leave her.” He further testified that M.G. was often angry after visits with his mother and he is “not understanding why he’s doing this.” M.G.’s father testified that Jennifer does not call M.G. or check on his progress with his schools. When asked why he was in support of terminating Jennifer’s rights, he responded: “We’ve been doing this for four years. If she can’t get her life back on track in four years, it’s never going to happen.”

Kelly Morgan, a DHS social worker testified Jennifer’s rights to D. (see n.2) were terminated in September 2008 and that, to her knowledge, Jennifer had not seen her daughter, S., since that time. Morgan expressed concerns that despite the recent divorce, she questioned whether Jennifer’s relationship with Bill was over. She testified she had concerns that Jennifer would reengage a relationship with Bill and expose M.G. to domestic violence.

Elizabeth Wilson is the family safety, risk, and permanency provider and conducted M.G.’s monthly supervised visits with Jennifer. Wilson testified that despite “a lot of parenting services, different services, to educate her on how to interact” with M.G., Jennifer “does not seem that she can take what she’s been taught and follow through with it.” Wilson testified that in recent visits, Jennifer spoke about adult matters around M.G. (complaints about her financial situation, stating she feels she does not have any reason to live), which is harmful to M.G. She testified that M.G. and Jennifer’s relationship was “superficial”: M.G. looked to Jennifer “to bring him something or to play with.”

Wilson testified that M.G. continued to express fear of Bill. She further testified that Jennifer and Bill’s relationship has been “on or off since I began services,” that she had seen the two together while no-contact orders were in

effect, and that Jennifer had been dishonest with her at times. She further testified that M.G. had a very strong bond with his father and stepmother and that he needs permanency and safety.

Jennifer testified she had been in the same job and housing since November 2008. She also sought and obtained a domestic abuse protective order against Bill. She testified her divorce from Bill was final March 1, 2010, and she had not spoken to him since his March 17, 2010 release from jail. When asked what was different this time from other times she had left Bill, Jennifer stated:

My biggest problem is he's made several threats with the kids or about family members and I seem to have a tendency to take it and I'm to the point now that I can't do it anymore.

Q. Have you any counseling that's helped you get there or is that something—A. Something I figured out on my own.

She testified she did not want her rights terminated and she was willing to enter into an agreement concerning visitation with M.G.'s father.

The court terminated Jennifer's parental rights pursuant to Iowa Code section 232.116(1)(g) and (k) (2009). Jennifer appeals. The State concedes that the statutory grounds have not been met for termination pursuant to section 232.116(1)(k). Thus, the question presented is whether termination of Jennifer's parental rights under section 232.116(1)(g) is warranted.

We review termination proceedings de novo. *In re Z.H.*, 740 N.W.2d 648, 650 (Iowa Ct. App. 2007). Although we are not bound by them, we give weight to the district court's findings of fact, especially when considering the credibility of witnesses. Iowa R. App. P. 6.904(3)(g); *In re M.M.S.*, 502 N.W.2d 4, 5 (Iowa 1993). The State has the burden of proving the grounds for termination by clear

and convincing evidence. *In re P.L.*, 778 N.W.2d 33, 34, 39 (Iowa 2010); *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006).

Iowa Code section 232.116(1)(g) authorizes the termination of parental rights where (1) the child has been adjudicated in need of assistance, (2) the court has terminated parental rights to another child who is a member of the same family, (3) “[t]here is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation,” and (4) an additional period of rehabilitation would not correct the situation.

Jennifer does not dispute the first two factors have been met. She asserts that having divorced Bill and maintained a no-contact order for a “number of months” negates the third factor, and she requests additional time to show the court she can establish that her relationship with Bill is over.

We commend Jennifer on her recent efforts to end her abusive relationship and to obtain employment and housing. However, upon our de novo review of the record, we conclude the statutory grounds under section 232.116(1)(g) have been met. We share some of the same concern noted by the district court in its assessment that it was “not convinced that she has permanently severed her relationship with [Bill] or will follow through with addressing her issues of domestic violence and mental health.” See *In re T.B.*, 604 N.W.2d 660, 662 (Iowa 2002) (stating the “future can be gleaned from evidence of the parents’ past performance and motivations”); *In re Dameron*, 306 N.W.2d 743, 745 (Iowa 1981) (noting insight for the determination of the child’s long-range best interests can be gleaned from “evidence of the parent’s past

performance for that performance may be indicative of the quality of the future care that parent is capable of providing”). Bill was in jail during at least several of the months that Jennifer contends she maintained the no-contact order. Bill was released about the time of the trial.

Even if Bill intends to relocate in Texas as Jennifer testified, other concerns remain. Jennifer has failed to make M.G. a priority in her life. Although we acknowledge that Jennifer has exercised supervised visitation, her visits have not been consistent until recently. She has made no effort to telephone M.G. or send him cards or gifts except one Christmas gift. There is also little evidence of a mother-child bond. The many services provided to Jennifer have not been successful in increasing the level and frequency of her visits with M.G.

Services to aid Jennifer’s parenting skills have not been successful in having her avoid speaking about adult issues during visits in M.G.’s presence. Her lack of trustworthiness has also slowed her efforts of success as a parent. Additional concerns exist about her selection of paramours, but she no longer participates in any domestic abuse or mental health counseling.

This case has been ongoing for four years. At some point, the rights and needs of the child rise above the rights and needs of the parent. *In re J.L.W.*, 570 N.W.2d 778, 781 (Iowa Ct. App. 1997). M.G. needs and deserves permanency. *In re J.E.*, 723 N.W.2d 793, 802 (Iowa 2006) (Cady, J., concurring specially). His father and stepmother are able to provide him the permanency he deserves.

We have also considered the factors of section 232.116(2) (“the child’s safety,” “the best placement for furthering the long-term nurturing and growth of

the child,” and “the physical, mental, and emotional condition and needs of the child”), and conclude termination of the mother’s rights is in the best interests of M.G. See *P.L.*, 778 N.W.2d at 39, 41. We have given much consideration to Jennifer’s request for six additional months to pursue reunification. We acknowledge that M.G. is not in foster care and Jennifer’s request has some appeal. However, for the reasons previously recited, particularly the length of time already afforded to Jennifer, we conclude any additional time would prove futile in changing Jennifer’s motivation and behavior. We therefore affirm.

**AFFIRMED.**